

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROSAURI CAPPELLAN MENDOZA,

Plaintiff,

-against-

SHIBNAD LOGISTICS LLC,

Defendant.  
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:  
: Civil Action No. 21-cv-4410  
:  
: **NOTICE OF REMOVAL**  
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Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, *et seq.*, Defendant Shibnad Logistics LLC (“Defendant”), by and through its attorneys, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., files this Notice of Removal with respect to the case identified as “Rosauri Cappellan Mendoza v. Shibnad Logistics LLC,” Index No. 803563/2021E, from the Supreme Court of the State of New York, County of Bronx. In support of this Notice, Defendant states as follows:

**TIMELINESS OF REMOVAL**

1. On or about March 5, 2021, Plaintiff Rosauri Cappellan Mendoza (“Plaintiff”) filed a Summons (“Summons”) and Verified Complaint (“Complaint”) with the Supreme Court of the State of New York, County of Bronx. True and correct copies of the Summons and Complaint are attached hereto as Exhibit A.

2. Defendant was served with the Summons and Complaint through the Secretary of State on April 28, 2021. *See Fernandez v. Hale Trailer Brake & Wheel*, 332 F. Supp. 2d 621, 624 (S.D.N.Y. 2004) (“[W]hen service of process is made upon a statutory agent rather than on the defendant personally, the thirty-day period during which the defendant may remove the case does not begin with service upon the agent, but rather, when the defendant receives personal service of the summons and complaint.”). A true and correct copy of the notice of the Summons

and Complaint from the Secretary of State, along with the certified mail envelope, is attached as Exhibit B.

### **VENUE**

3. The Supreme Court of New York, County of Bronx, is located in the United States District Court for the Southern District of New York.

4. Therefore, venue for purposes of removal is proper under 28 U.S.C. § 1446(a) because the Southern District of New York is the district court for the district and division within which the Complaint is pending.

### **BASIS FOR REMOVAL: DIVERSITY OF CITIZENSHIP**

5. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), in that it is a civil action in which the matter in controversy exceeds \$75,000, exclusive of interest and costs, and is between citizens of different states.

6. Upon information and belief, at the time this action was commenced, Plaintiff was a resident and citizen of the Commonwealth of Pennsylvania. (Complaint ¶ 1).

7. Defendant is a citizen of the State of New York within the meaning of 28 U.S.C. § 1332(c)(1). Defendant is a New York limited liability company with its principal place of business in the State of New York.

8. As part of the Complaint, Plaintiff has alleged damages, including compensatory damages, “in an amount that exceeds the jurisdictional limits of all lower courts, punitive damages, attorneys’ fees, the costs of this action, as well as other damages.” (Complaint ¶¶ 60, 66, 71, 76.) The amount in controversy therefore is above the \$75,000 threshold under 28 U.S.C. § 1332(a).

9. Accordingly, this case is a civil action that is based upon diversity of citizenship, and is therefore one which may be removed from the Supreme Court of the State of New York, County of Bronx, pursuant to 28 U.S.C. § 1441(b).

10. Defendant will serve copies of this Notice of Removal upon Plaintiff and file a copy with the Clerk of the Supreme Court of the State of New York, County of Bronx, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant respectfully notifies Plaintiff and this Court of the removal of this action from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York.

Dated: New York, New York  
May 17, 2021

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: /s/ Evan B. Citron

Evan B. Citron

Jessica R. Schild

599 Lexington Avenue, 17<sup>th</sup> Floor

New York, New York 10022

(212) 492-2500

evan.citron@ogletreedeakins.com

jessica.schild@ogletreedeakins.com

*Attorneys for Defendant*

**CERTIFICATE OF SERVICE**

I, Evan B. Citron, hereby certify that on May 17, 2021, I caused the within Notice of Removal to be electronically submitted to the Clerk of the Court for the U.S. District Court for the Southern District of New York, and a copy of the within pleading to be served via overnight delivery, postage prepaid upon:

Joseph P. Donnelly  
Donnelly Stehn, LLP  
1035 Park Blvd., Ste 3C  
Massapequa Park, New York 11762  
*Attorneys for Plaintiff*

s/ Evan B. Citron  
Evan B. Citron